IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVIEW APPLICATION NO.1 OF 2003

1. Smt. Maria Exaltacao Vaz
   alias Elasso Vaz, aged
   70 years, married, housewife,
   and her husband and

2. Shri Rosario Oliveira,
   aged 75 years, s/o late
   Constantino Oliveira,
   both r/o House No.29,
   Ilha de Rachol,
   Salcete, Goa ... APPLICANTS

VERSUS

1. Smt. Sushila Sadanand
   Borkar, major in age,
   d/o Sadanand Ladu Borkar;

2. Smt. Nila Sadanand Borkar,
   major in age, d/o late
   Sadanand L. Borkar;

3. Kum. Shobha Sadanand
   Borkar, major, d/o late
   Sadanand L. Borkar;

4. Shri Devidas Sadanand
   Borkar, major in age,
   s/o late Sadanand Ladu
   Borkar, all r/o House No.
   335, Shrama Safalya,
   Fatorda, Margao,
   Salcete, Goa ... RESPONDENTS.

Mr. Y.V. Nadkarni, Advocate for the Appellants.

Mrs. A. Agni, with Mrs. A. Dessai, Advocates for the Respondents.

CORAM : S.J. VAZIFDAR,J.

DATED : APRIL 4, 2003.

ORAL ORDER

By the Judgment under review, the Petitioner was permitted to make an application under Order 21, Rule 99 of the Code of Civil Procedure. It was agreed by the Respondents that if such an application was made it would not be objected to on the ground of maintainability. Mrs. Agni fairly states that probably the reference to Rule 99 alone is a typographical error. The Order should read to include an application under Order 21, Rule 97.

2. The ground on which the review is sought is that the Judgment is contrary to an earlier Judgment of a learned Single Judge in the case of **Baun Foundation Trust & another v. Faredoon Rustom Tirandaz & another [2002 (5) B.C.R. 438].** That judgment was delivered before the Judgment sought to be reviewed. This submission is not without force. However, in the present case there is no need to interfere with the Order under review for recourse to an application under Order 21, Rule 97 is also permissible. The Petitioner's apprehension is that the execution proceedings have already been closed and that the Respondents may contend that in view thereof the Application is not maintainable. Mrs. Agni states that no such contention will be taken and

that the Petitioner is free to make the application under Order 21, Rule 97.

In view of the statement, the Petition is dismissed. Liberty to apply in case of difficulty.

S.J. VAZIFDAR,J.

ac.